

Robert F. Hochwarth
General Attorney

No.

Date

JAN 19 1981

Fee \$ 50.00

JAN 19 1981
Washington, D. C.

1-009A031



January 5, 1981

Law Department
Terminal Tower
P. O. Box 6419
Cleveland, Ohio 44101
216 623 2405

Mrs. Agatha L. Mergenovich, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

12719
RECORDATION NO. Filed 1425

Attention: Mrs. M. R. Lee, Room 2303
Recordation Unit

JAN 9 1981 -9 40 AM

INTERSTATE COMMERCE COMMISSION

Dear Ms. Lee:

Enclosed are five executed counterparts of an Agreement dated January 1, 1981, among General Motors Corporation (Electro-Motive Division), The Chesapeake and Ohio Railway Company and Chicago South Shore and South Bend Railroad. This Agreement constitutes an interim user agreement, allowing use of the equipment described below pending completion of permanent financing. The names and addresses of the parties are as follows:

Bailor: General Motors Corporation
(Electro-Motive Division)
LaGrange, Illinois 60525

Bailee and Sub-Bailor: The Chesapeake and Ohio Railway Company
P. O. Box 6419
Cleveland, Ohio 44101

Sub-Bailee: Chicago South Shore and South Bend Railroad
North Carroll Avenue
Michigan City, Indiana 46360

JAN 9 9 36 AM '81
DOCKET FILES
BRANCH

The equipment covered by the above documents consists of 10 2000 H.P. GP 38-2 Locomotives to bear Sub-Bailee's Road Nos. 2000-2009, inclusive, AAR Mechanical Designation: BB. The equipment will be marked "South Shore" or "CSSSB" or in some other appropriate manner and will also be marked "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

Also enclosed is a draft in the amount of \$50 representing the required recordation fee.

Pursuant to the Commission's rules and regulations for recordation of certain documents under 49 U.S.C. §11303, you are hereby requested to file one of the enclosed counterparts for record in your office and return the remaining copies to me. Please telephone me collect upon recordation of the enclosed documents.

Very truly yours,

R. F. Hochwarth

RFH/mw

Enclosures (5)

The Chessie System railroads are the C&O, B&O, WM and affiliated lines. Chessie System, Inc. is the parent for the railroads, Chessie Resources, Inc., Western Pocahontas Corp. and The Greenbrier.

Interstate Commerce Commission
Washington, D.C. 20423

1/9/81

OFFICE OF THE SECRETARY

R.F. Hochwarth

The Chessie System

Terminal Tower

P.O.Box 6419

Cleveland, Ohio 44101

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **1/9/81** at **9:40am**, and assigned re-recording number(s). **12719**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

12719

RECORDATION NO. _____ Filed 1425

JAN 9 1981 -9 40 AM

INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of January 1, 1981

among

GENERAL MOTORS CORPORATION
(Electo-Motive Division),

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

and

CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD

Covering

10 2000 H.P. Model GP 38-2 Locomotives

THIS AGREEMENT, dated as of January 1, 1981, among GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (Manufacturer), THE CHESAPEAKE AND OHIO RAILWAY COMPANY, a Virginia corporation (C&O), and CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, an Indiana corporation (South Shore):

WITNESSETH:

The Manufacturer and C&O heretofore entered into an Agreement (copy of which Agreement is made a part hereof by reference), and such addenda thereto and modifications thereof as may have been made or may be agreed upon in writing between the Manufacturer and C&O whereunder the Manufacturer agreed (among other things) to construct at its LaGrange, Illinois plant and to deliver to C&O at Michigan City, Indiana, or at such other point or points as directed by C&O, and C&O agreed to accept and pay for 10 2000 H.P. Model GP-38-2 locomotives (Locomotives), to bear South Shore road numbers 2000-2009, inclusive.

C&O has agreed to sell the Locomotives to South Shore pursuant to a Conditional Sale Agreement and the Locomotives will be used by South Shore on its line of railroad.

As contemplated by said Agreement, C&O intends to finance the purchase of the Locomotives from the Manufacturer pursuant to an Equipment Trust Agreement to be dated as of

March 1, 1981, but deliveries of the Locomotives are scheduled to begin on or about January 9, 1981, and C&O will not have established said financing arrangement by that time nor be in position to take such deliveries thereunder. C&O represents that such financing arrangement will be established, however, on or before April 1, 1981. C&O, in order that South Shore may use the Locomotives pending establishment of such financing arrangement, has arranged with the Manufacturer to give South Shore temporary custody and possession of the Locomotives upon their completion, solely as a bailee of the Locomotives, and the Manufacturer is willing to do so upon the terms and conditions hereinafter stated.

In consideration of the premises, the Manufacturer hereby delivers to C&O and C&O hereby accepts from the Manufacturer and C&O hereby delivers to South Shore and South Shore hereby accepts from the Manufacturer the Locomotives as of the date each of them is delivered to C&O and South Shore at Michigan City, Indiana, or such other point or points as may be directed by South Shore for the period ending on the earlier of April 1, 1981, or the date of establishment of said financing arrangement. On such termination date, this Agreement shall automatically be cancelled and superseded without further action by or notice to any party concerned.

Upon delivery of each Locomotive to the delivery point, C&O's and South Shore's representative will execute a

certificate of acceptance acknowledging the receipt of delivery of such Locomotive under this Agreement. Title to the Locomotives shall remain in the Manufacturer and C&O's and South Shore's rights and interests therein is and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of bills of sale. C&O, without expense to the Manufacturer, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. In addition, C&O and South Shore shall do such other acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Locomotives.

C&O and South Shore agree they will permit no liens of any kind to attach to the Locomotives; and that they will

(a) indemnify and save harmless the Manufacturer from any and all claims, expenses or liabilities of whatsoever kind; and

(b) pay any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or the Manufacturer,

because of the Manufacturer's ownership or because of the use, operation, management or handling of the Locomotives by South Shore during the term of this Agreement. C&O's and South

Shore's obligations contained in this paragraph shall survive the termination of this Agreement.

South Shore will, at its own expense, keep and maintain the Locomotives in good order and running condition and will at its option repair or replace or promptly pay to C&O and C&O, in turn, will promptly pay to the Manufacturer the purchase price in cash of those Locomotives which may be damaged or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each Locomotive to C&O and South Shore under this Agreement it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each Locomotive, in contemplation of said financing arrangement, the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION"

C&O and South Shore hereby agree to indemnify the Manufacturer against any liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Locomotives.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Locomotives, South Shore shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Manufacturer, including the right to receive the purchase price of the Locomotives as provided in the Agreement, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Manufacturer's warranties, indemnities or any other obligations contained in this Agreement or in the Agreement relating to the Locomotives. In the event the Manufacturer assigns its rights to receive the payments herein and/or under the Agreement, and C&O and South Shore receive written notice thereof from the Manufacturer, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by C&O or South Shore under this Agreement shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to C&O and South Shore.

In the event of any assignment by the Manufacturer of its rights to receive any payments under this Agreement or under the Agreement, the rights of such assignee to such payments as may be assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer in respect to the Locomotives, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness

or liability at any time owing to C&O or South Shore by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by C&O and South Shore, their successors and assigns only against the Manufacturer and its successors and assigns (other than assignees as such of rights, benefits or advantages assigned pursuant to this Agreement).

C&O and South Shore agree with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to C&O and South Shore of the Locomotives, as contemplated by this Agreement, shall not relieve C&O of its obligations to accept, take and pay for the Locomotives in accordance with the terms of the Agreement, or impair any of the Manufacturer's rights under the Agreement.

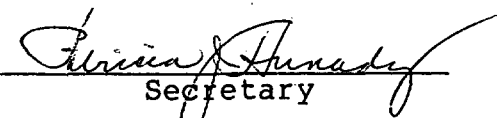
Attest:
(CORPORATE SEAL)


Assistant Secretary

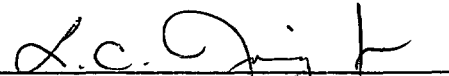
GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By 
Vice President

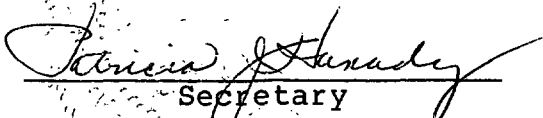
Attest:
(CORPORATE SEAL)


Secretary

THE CHESAPEAKE AND OHIO
RAILWAY COMPANY

By 
Assistant Vice-President
and Treasurer

Attest:
(CORPORATE SEAL)


Secretary

CHICAGO SOUTH SHORE AND
SOUTH BEND RAILROAD

By 
Treasurer

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

On this *5th* day of January, 1981, before me personally appeared **P. K. HOGLUND**, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[NOTARIAL SEAL]
My Commission expires:

J. K. Porecki

Notary Public
My Commission Expires September 18, 1983

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 31st day of December, 1980, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is Assistant Vice-President and Treasurer of THE CHESAPEAKE AND OHIO RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Company, that said instrument was signed and sealed on behalf of said Company by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Company.

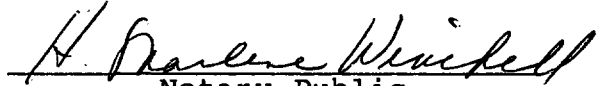
[NOTARIAL SEAL]
My Commission Expires:

H. Marlene Winchell

Notary Public
H. MARLENE WINCHELL, Notary Public
State of Ohio, (Lorain)
My commission expires Nov. 24, 1984

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

On this 31st day of December, 1980, before me personally appeared L. C. ROIG, JR., to me personally known, who, being by me duly sworn, says that he is Treasurer of CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

[NOTARIAL SEAL]
My Commission Expires:

H. MARLENE WINCHELL, Notary Public
State of Ohio, (Lorain)
My commission expires Nov. 24, 1984